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C.R.P.(PD) No.397 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD) No.397 of 2022

and

C.M.P. No.2070 of 2022

1.S.R.Rajendran

2.R.Santhosh

... Petitioners

Vs.

1.G.V.Aathimoolam

2.A.Senbagadevi

3.A.Vijayaraj

4.A.Vishnuraj

... Respondents

**COMMON PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 22.09.2021 made in I.A. No.549 of 2018 in O.S. No.192 of 2018 on the file of the I Additional District Judge, Erode.

For Petitioners : Mr.M.Guruprasad

### **ORDER**

Aggrieved by the dismissal of their application for rejecting the plaint, the defendants are before this Court challenging the said order.



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2. The brief facts are as follows:

The respondents/ plaintiffs had filed the Suit O.S. No.192 of 2018 on the file of the I Additional District Court, Erode for setting aside the Sale Deed dated 21.04.2017 executed by the plaintiffs in favour of the first defendant in respect of the suit schedule properties as null and void and unenforceable not acted upon as it is obtained by the first defendant through fraud and misrepresentation and undue influence and therefore would not bind the plaintiffs, to declare the settlement deed dated 11.09.2017 executed by the first defendant in favour of the second defendant as null and void and for an injunction restraining the defendants from trespassing into the property or alienating the same.

3. The plaintiffs would contend that they had jointly purchased the suit schedule property under a registered Sale Deed dated 27.10.2005 from Sakthivel and Ragunathan. They were inducted into possession of the suit properties and enjoying the same as absolutely. The defendants are money lenders, doing business without having the business registered. They are lending money for higher interest at the rate of 36% per annum.



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4. The plaintiffs who are doing business in dealership of Nissan cars at Erode, needed financial assistance for their business purpose. The defendants have agreed to lend a sum of Rs.30,00,000/- but however, claimed interest at the rate of 36% per annum, on condition that the debt to be discharged within a period of one year from the date of borrowal. As security, the first defendant had obtained a registered Sale Agreement dated 10.03.2014 in respect of the suit properties. As per the terms of the agreement of sale, the sale consideration was Rs.32,51,000/-, of which, a sum of Rs.30,00,000/- was shown to be paid as advance. This Rs.30,00,000/- constituted the loan borrowed by the plaintiffs. The agreement also stipulated that the balance consideration of Rs.2,51,000/- was payable within a period of one year which was in consonance with the agreement between the parties that the loan shall be disposed of within a period of one year. Unfortunately, the plaintiffs were not able to mobilise the said sum of Rs.30,00,000/- and discharge their debts. Therefore, the defendants insisted that the earlier sale agreement to be revoked and fresh agreement entered into. Therefore, on 19.02.2015, the plaintiffs and the first defendant has cancelled the earlier agreement and in the cancellation deed



stated that the first defendant was unable to take the Sale Deed from the plaintiffs and therefore they revoking the agreement. On the same day, another registered Sale Deed was executed in favour of the first defendant. The plaintiffs submit that they had been servicing the interest regularly. However, due to the slackness in the business and heavy competition, they were unable to mobilize the funds for clearing the debt of the defendants. The defendants demanded that the plaintiffs sell the property to them which was refused. The defendants however assured that if the Sale Deed was executed in their name they would re-convey the property back to the plaintiffs' once amounts will be discharged.

5. Believing the same, the plaintiff executed as sham and nominal sale deed dated 21.04.2017. The first defendant had obtained the Deed in his name. There was no consideration for the Sale Deed dated 21.04.2017, that the Sale Deed was only a sham and nominal one is evident from the fact that the plaintiffs have not handed over the possession of the property to the defendants and on the contrary continued to be in possession thereof.

6. The other agreement of sale also came to be executed between the



parties and a power of attorney dated 27.04.2017 was also executed in favour of the first defendant. Taking advantage of the Sale Agreement and Power Attorney Deed dated 27.04.2017, the defendants had conveyed another Sale Deed dated 24.10.2017 in favour of the first defendant in respect of 26 cents of land at the Kettisamuthiram Village.

7. It is the case of the plaintiffs that they had discharged the entire principal and interest to the defendants and thereafter, the defendants had executed a registered Sale Deed dated 02.02.2018 in respect of both properties at Kettisamuthiram Village. While delivering the principal amount with interest, disputes arose between the plaintiffs and the defendants on account of interest demanded by the defendants. Once the misunderstanding arose the first defendant executed a registered Settlement Deed in favour of the second defendant in respect of the suit properties dated 11.09.2017. The plaintiffs would submit that no right would flow under the said document to the second defendant. Therefore, the plaintiffs have come forward with the Suit.

8. The defendants who had entered appearance had filed their written



statement and along with the said statement, the defendants have come forward with an application for rejecting the plaint in I.A. No.549 of 2018.

The reasons for seeking the rejection has been constituted in paragraph 4 of the affidavit filed in support of the petition. The counter was filed by the first defendant, in which, they have stated that various allegations were made against the defendants which had to be proved through evidence. That apart, no ground as contemplated under Order 7 Rule 11 has been made out. The plaintiffs would further contend that the defendants have played fraud and forgery. In these circumstances, the plaint cannot be rejected.

9. The learned I Additional District Judge, Erode by his order dated 22.09.2021 was pleased to dismiss the said application. This order is the subject matter of the challenge.

10. Heard the counsel appearing for the petitioners.

11. A perusal of the records would show that the Suit has been filed by the petitioner setting out several instances and circumstances, in which, the defendants had forced the plaintiffs to execute various documents as



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security for the amount borrowed from them and how they had misused the said documents to create further alienation despite the undertaking given by them that the said deeds would not be misused. The application for rejection of plaint makes interest in reading. The only reason to file rejection of plaint is set out in paragraph 4 of the affidavit which reads as follows:

*"4. We further submit that the respondents/ plaintiffs filed the Suit without any cause of action. The plaint is also not containing any averment about cause of action to file the suit. Even though in the cause of action para alleged so many cause of action it did not contain anything about the cause of action which leads to filing of this Suit. The respondents/ plaintiffs never alleged that they demanded us to execute sale deed in favour of them anywhere in the plaint. Therefore, without alleging any cause of action which leads to filing of the suit the plaint is liable to be rejected."*

12. The plaintiffs in their counter have once again in a nutshell set out various facts in the dispute between themselves and the defendants which gives rise to the cause of action. Therefore, it is the case of the petitioners that the allegation that the plaint lacks in cause of action is totally against the contents of the plaint.

13. The I Additional District Judge has considered the application and



held that the Suit contains a bundle of cause of action and each of them has to be proved in order to substantiate the claim. As rightly held by the learned District Judge, a mere reading of the plaint would indicate the disputes between the plaintiffs and the defendants which by themselves make out a cause of action. Further, the plaintiffs should be given an opportunity to substantiate these contentions and if the plaint is rejected at the threshold, the plaintiffs would lose this opportunity. Further, it is also to be noted that the defendants who have come forward with an application to reject the plaint has not made out any case for rejecting the plaint except for stating that there is no cause of action. The Court should always be circumspect while dealing with applications for rejecting the plaint. Unless an exceptional case is made out, the Court should generally lean and favour of the plaintiffs provided the reading of the plaint and documents filed thereon bring out the cause of action for the Suit.

14. The case on hand does not lack these ingredients and clearly makes out a cause of action and which are also substantiated to some extent by the documents filed. In these circumstances, I do not see any reason to interfere with the order of the Trial Court.



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15. Accordingly, the Civil Revision Petition is dismissed and the Fair and Decretal Order dated 22.09.2021 made in I.A. No.549 of 2018 in O.S.No.192 of 2018 on the file of the I Additional District Judge, Erode., is confirmed. No costs. Consequently the Civil Miscellaneous Petition is closed.

**18.02.2022**

Index : Yes/No  
Speaking Order : Yes / No  
ab/ssn

To

1. The I Additional District Judge,  
Erode.
2. The Section Officer,  
VR Section, Madras High Court,  
Chennai.



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**P.T. ASHA, J.,**

ab/ssn

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